



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

October 31, 1951

Hon. Paul H. Brown  
Fire Insurance Commissioner  
Board of Insurance Commissioners  
Austin, Texas

Opinion No. V-1336.

Re: Constitutionality of a rider  
in the general appropriation  
bill prescribing the method  
of handling expense money  
collected pursuant to Art.  
4898, V.C.S.

Dear Sir:

You have requested an opinion of this office regarding the constitutionality of the following rider in the general appropriation bill for the biennium ending August 31, 1953:

"Provided also that such sums as are received by the Fire Division as provided by Article 4898 R.C.S. shall be deposited to the Departmental Suspense Account in the State Treasury. Expenses of State employees incident to the investigations shall be paid from travel expenses hereinabove appropriated and such travel expense appropriation shall be reimbursed for the actual amounts expended under the provisions of Article 4898 R.C.S. by a transfer from the amount on deposit in the Departmental Suspense Account." (H.B. 426, Acts 52nd Leg., R.S. 1951, ch. 499, p. 1228, at p. 1373.)

Your first question is as follows:

"Is this rider void and of no effect by virtue of Section 35, Article 3 of the Constitution by reason of the fact that the subject matter thereof is not quoted in the caption of H.B. No. 426? (Reference Attorney General's opinion V-1254, dated August 25, 1951, and cases cited.)"

The general rule as to captions is stated in San Antonio and A. P. Ry. v. State, 128 Tex. 33, 95 S.W.2d 680, 688 (1936), as follows:

" . . . The generality of the title is no objection to it so long as it is not made a cover to legislation which by no fair intendment can be considered as having a necessary or proper connection. Joy v. City of Terrell (Tex.Civ.App.) 138 S.W. 213, 215; City of Aransas Pass v. Keeling, Atty. Gen., 112 Tex. 339, 247 S.W. 818.

"It would be burdensome if not intolerable to require that the title should be as full as the act itself. The word "title" implies that no such requirement exists. The purpose of the constitutional provision is merely to reasonably apprise the legislators of the contents of the bill, to the end that surprise and fraud in legislation may be prevented.' Doeppenschmidt v. I. & G. N. R.R. Co., 100 Tex. 532, 101 S.W. 1080, 1081."

Thus, so long as the title gives notice of the contents of the body of the act, there is no evil in generality. However, when the caption provisions are narrow and restrictive, portions of the act broader than the caption are unconstitutional. Att'y Gen. Op. V-1253 (1951).

We are of the opinion that the rider in question properly falls under the following portion of the caption to the general appropriation act: "An Act . . . prescribing certain specific procedures, rules, regulations, restrictions and limitations relating to and governing the expenditures of appropriations made herein . . ." The rider appropriates the funds collected by virtue of Article 4898, V.C.S., for certain designated uses and sets up the procedure for utilizing the appropriation. The title provision is general in form, but it gives sufficient notice of what is attempted by the rider; hence there is no violation of Article III, Section 35 of the Texas Constitution.

The remainder of your questions deal with the means of utilizing the required deposit, and the answers depend on a determination of whether this rider attempts to incorporate general legislation within an appropriation bill or to alter, amend, or repeal a general statute. If the rider does make such an attempt, it is unconstitutional. Att'y Gen. Op. V-1254 (1951). If not, the rider provisions must be followed.

Your questions are as follows:

"Is the rider invalid, illegal and ineffective by reason of the fact that it attempts to or does, in a general appropriation bill, repeal, modify, or amend an existing law, to wit: Article 4898?

"Does the rider effectually require an insurance company requesting an investigation of a fire and the State Insurance Commission to deposit in the State Treasury the funds evidencing the expenses of the State Fire Marshall or other suitable person to act for him, which funds are for expenses as provided in Article 4898?

"Are such funds, as provided in Article 4898 as expenses for the State Fire Marshal or other suitable person designated to act for him under the General Statute, Article 4898, such funds as become subject to legislative control or regulation by rider direction to an appropriation bill?"

Article 4898, V.C.S., provides:

"If for any reason the State Fire Marshall is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshall with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the State Insurance Commission may allow. If the

investigation of a fire is made at the request of an insurance company, or at the request of a policyholder sustaining loss, or at the request of the mayor, town clerk or chief of the fire department of any city, village or town in which the fire occurred, then the expenses of the Fire Marshal, clerical expenses, witnesses and officers fees incident and necessary to such investigation shall be paid by such insurance company, or such policyholder of such city or town as the case may be, otherwise the expenses of such investigation are to be paid as part of the expenses of the State Insurance Commission. The party or parties, company or companies, requesting such investigation, shall before such investigation is commenced deposit with the State Insurance Commission, an amount of money in the judgment of said Commission sufficient to defray the expenses of said Fire Marshal in conducting such investigation."

The money that is required to be deposited does not at the time of deposit become the property of the State, since at that time its status is undetermined. Only that portion of the deposit equal to the actual expenses of the investigator will become State property, and the remainder, if any, continues to be the property of the person or firm requesting the investigation. The Legislature has, by general statute (Art. 4388, V.C.S.), provided for the handling of funds "the status of which is undetermined," as follows:

"The State Treasurer shall receive daily from the head of each Department, each of whom is specifically charged with the duty of making same daily, a detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury, together with the actual remittances which the Treasurer shall cash and place in his vaults or in legally authorized depository banks, if the necessity arises. The report from the

General Land Office shall include all money for interest, principal and leases of school, university, asylum and other lands. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each Department; and the cashier of the Treasurer's Department shall keep a cash book, to be called 'suspense cash book,' in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued or when their issuance is delayed. As soon as the status of money so placed with the Treasurer on a deposit receipt is determined, it shall be transferred from the suspense account by placing the portion of it belonging to the State in the Treasury by the issuance of a deposit warrant, and the part found not to belong to the State shall be refunded. When deposit warrants are issued, they shall be entered in this cash book, as well as any refunds, and the balance shall represent the aggregate of the items still in suspense. Refunds shall be made in a manner similar to that in present use, except that separate series of warrants shall be used for making such refunds, to be called 'refund warrants,' and such warrants shall be written and signed by the Comptroller and counter-signed by the Treasurer and charged against the suspense funds to which they apply. Such warrants shall then be returned to the Comptroller and delivered by him to the person entitled to receive them."

By the terms of the above Article, when the status of the deposited money is determined,--in your case, when the investigator's expense account is approved,--the Treasurer will transfer by warrant an amount equal to the total of the expense account to the Fire Insurance Division's Travel Expense Account, from which a warrant may be issued to the investigator, and by a refund warrant return the remainder, if any, to

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the person or firm requesting the investigation. Daniel v. Richcreek, 118 S.W.2d 935 (Tex. Civ. App. 1938), and Att'y Gen. Op. O-945 (1940).

The rider in question does not attempt to alter, amend, or repeal any general statute. The provision requiring the money to be deposited to the Department Suspense Account is in compliance with Article 4388, V.C.S. This portion of the rider merely reiterates the general statute and has no other legal effect. Att'y Gen. Op. O-1837 (1940). The appropriation in the rider is for the purposes set out by Article 4898, V.C.S., and as such is proper and valid. Att'y Gen. Op. V-1267 (1951). Therefore, you are advised that the method of operation provided by Article 4388, V.C.S., and the rider to the general appropriation bill is the proper method of handling and accounting for the funds in question.

#### SUMMARY

The title to the general appropriation bill for the biennium ending August 31, 1953, is sufficiently broad and general to include the rider (H.B. 426, Acts 52nd Leg., R.S. 1951, ch. 499, p. 1228, at p. 1373) regulating the disposition of funds deposited with the Board of Insurance Commissioners to defray the anticipated expenses of a fire investigator.

The rider does not attempt to alter, amend, or repeal a general statute, but merely reiterates the requirements of Art. 4388, V.C.S., a general statute prescribing the method for handling funds "the status of which is undetermined."

Yours very truly,

APPROVED:

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